IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE K.C. BHANU

W.P.Nos.12146 and 13532 of 2004

-

-

-

W. P. NO : 12146 of 2004

Between:

Y. Srikanth, S/o Y. Aagarao,
R/o College Road, Mancherial, Adilabad District.

..... PETITIONER

AND

1. State of Andhra Pradesh, Rep. by its Principal Secretary to The Government, Medical and Family Welfare , E-1 Department, Secretariat, Hyderabad.
2 NTR University of Health Sciences, Rep. by its Registrar, Vijayawada.
3 Andhra Pradesh Private Medical & Dental Colleges Managements Association (Regd) 103, Reliance Residency, Opp NTR Stadium, Ashok Nagar, Hyderabad, rep. by its Secretary
C. Lakshmi Narasimha Rao

(R3 is impleaded as per Court Order dated 21-7-2004 in WPMP 16051 of 2004)

.....Respondents

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, or order or direction more particularly in the nature of Writ of Mandamus

declaring the action of the respondents in permitting the private managements of un aided non minority medical colleges to fill the 25% of seats in each college based upon the qualifying examination alone is arbitrary and unconstitutional and violative of Supreme Court Judgment 2003 (6) SCC 697 and consequently set aside the para 3 and 6 (c) of G.O.Ms.No. 184 dated 30-6-2004

Counsel for the Petitioner: MR.K.S.MURTHY

Counsel for the Respondent No.1: The Advocate General

Counsel For Respondent No.2. Smt.Y.Padmavathi, Standing counsel for University of Health Sciences.

Counsel for Respondent No.3: Mr. B.Adinarayana Rao

-

-

-

-

-

WRIT PETITION NO : 13532 of 2004

Between:

T. Monica Sreeja,
T. Lakshmi Manohar Rao S/o T. Rajeswara Rao,

aged 50 years, Occ: Service, R/o Hyderabad.

..... PETITIONER

AND

1. The State of Andhra Pradesh, rep. by its Principal Secretary to the Government, Health, Medical & Family Welfare Department, Secretariat Buildings, Saifabad, Hyderabad.

2. The NTR University of Health Sciences, Vijayawada - 500 008.
rep. by its Registrar.

3. The Medical Council of India, New Delhi, rep. by its Secretary.

4. The Deccan College of Medical Sciences, Hyderabad. Rep by its Secretary.

5. Principal, Deccan College of Medical Sciences, Hyderabad.

..RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an Order or direction more particularly one in the nature of Writ of mandamus (a) Declaring the action of the respondents in permitting the private managements of un-aided non-minority medical colleges to fill the 25% 'C' category seats in each college based upon the qualifying examination alone as arbitrary and un-constitutional and violative of law laid down by the Supreme Court in 2003 (6) SCC 697 and consequently set aside the Sub rule (C) of Rule 4 and Rule 6(C) of G.O.Ms.No. 184 dated 30-6-2004

Additional prayer vide WPMP No.21561 of 2004:

"Declaring the action of the respondents in issuing G.O.Ms.No.185 dated 30.6.2004 and G.O.Ms.No.217 dated 23.7.2004 as violative of the law laid down by the Supreme Court in (2002)8 SCC 481 as clarified by the judgment in (2003) 6 SCC 697 and also in contravention of proviso to Section 3 of Act 5 of 1983 and consequently direct the respondents to strictly implement the law laid down by the Supreme Court by duly reckoning the merit in the common entrance test for the purposes of admission into First Year MBBS Course for the academic year 2004-2005 into seta that are ear-marked for management and pass such order or further orders as are deemed fit and proper in the circumstances of the case."

Counsel for the Petitioner: MR.P.S.RAJASEKHAR

Counsel for Respondent No1.: Mr.Advocate General

GP FOR EDUCATION

Counsel for Respondent No.2: Smt.Y.Padmavathi, SC for University

of Health Sciences.

Counsel for Respondent No.3: Mr.S.Niranjan Reddy, SC for Medical

Council of India.

Counsel for Respondent No.4:

Counsel for Respondent No.5:

The court made the following:

-

-

-

-

-

-

-

COMMON ORDER: (Per Sri BRSR.J)

These two writ petitions are required to be disposed of by a common order since the question that arises for our consideration is one and the same.

The writ petitioners, who were unsuccessful in securing the seats in to 1st year MBBS course filed these writ petitions challenging the validity of Rule 4(c) and Rule 6(c) of the Andhra Pradesh Un-aided Non-Minority Professional Institutions (Regulations of Admissions into Under Graduate Medical and Dental Professional Courses) Rules 2003, (for short the Rules.)

The Governor of A.P. in exercise of powers conferred by Sections 3 and 15 of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983, (A.P. Act 5 of 1983) (for short 'Act 5 of 1983') and in supersession of the Rules issued in G.O.Ms.No.488 HM&FW (E1) Department dated 5.9.2003 framed the Rules referred to hereinabove. There is a reference to the judgment rendered by the Supreme Court in ***TMA Pai Foundation***

v. State of Karnataka as well as ***Islamic Academy of Education v. State of Karnataka*** in the preamble to Rules. These Rules regulate admissions into under graduate medical and dental professional courses and applicable to all unaided non-minority professional institutions imparting undergraduate professional courses in medical and dental courses for which admissions are required to be made to the 'Competent Authority Seats' 'EAMCET Ranking Management seats' and 'Management Seats' in the manner specified in the rules. The Rules have come into force from the academic year 2004-2005.

The allotment of seats to each Unaided Non-Minority Professional Institutions under the Rules are classified into 3 categories, which are in the following manner.

> "(xv) *Category-A* seats (50% of the sanctioned in take of the seats)-
>
> "Competent Authority Seats". The seats shall be filled through counseling by the Committee for Admissions appointed by the Competent Authority as per merit from the candidates who have qualified at the common entrance test, EAMCET held by the State for that year and following the rules of reservation.
>
> *Category – B* (25% of the sanctioned intake of the seats) – "EAMCET ranking based Management seats" – The seats shall be filled through counseling by the Committee for Admissions appointed by the Competent Authority as per merit from the candidatures who have qualified at the common entrance test, EAMCET held by the State for that year and following the rules of reservation as agreed to by the A.P. Private Medical and Dental Colleges Managements Association, Hyderabad."

The procedure for admission into 'C' category seats is provided for under Rule 6-C of the Rules and the same reads as follows;

> Category-C (25% of the sanctioned tintake of the seats) – "managements setas". The seats shall be filled by the Managements of individual Colleges or Committee of Managements in the order of merit based on the applications received following a transparent procedure as specified in these rules."

Learned counsel for the petitioners Sri K.Srinivasa Murthy and Sri P.S.Rajasekhar submitted that the impugned Rule 6(c) which prescribes the procedure for filling up the seats by the individual college/committee of managements based on the marks obtained in the qualifying examination is contrary to the judgment of the Supreme Court in ***Islamic Academy of Education's case*** (2 supra). The submission was that even 25% of the sanctioned intake of the seats to be filled in by managements is required to be based on the merit in the common entrance test conducted by the State since the private managements did not conduct any such entrance test. The rule enabling the private managements to fill up the management seats based on the marks obtained in the qualifying examination is void and inoperative. The State Government played into the hands of the private managements in framing the rule, which has paved the way for collecting the capitation fee which is otherwise prohibited by Act 5 of 1983. The sum and substance of the argument was that the Rule prescribing procedure for filling up 25% of the management seats based on the marks obtained in the qualifying examination is contrary to the judgment of the Supreme Court in ***Islamic Academy of Education's case (2* supra).**

The learned Advocate General submitted that the Rules have been made by the rule making authority in exercise of the statutory power and no motives can be attributed to the rule making authority. The rules were framed in exercise of the legislative powers and no mala fides can be attributed to the legislation. It was submitted that the Rules are in conformity with the law laid down by the Supreme Court in *TMA Pai's case* and as well as the *Islamic Academy of Education's case*. That both the judgments are required to be read together and each cannot be read in isolation. The observations made in the judgments of the Supreme Court cannot be torn out of context but are required to be understood broadly in terms of the law

declared by the Court. The observations made here and there in the judgment do not constitute the *ratio decidendi*.

The short question that falls for our consideration is whether Rule 6(c) of the Rules is contrary to the law laid down by the Supreme Court in *TMA Pai's case* and *Islamic Academy of Education's case*.

Act 5 of 1983 enacted by the Andhra Pradesh State Legislature is an Act to provide for regulation of admissions into educational institutions and to prohibit collection of capitation fee in the State of A.P. Section 3 of the Act mandates that admission into educational institutions shall be made either on the basis of the marks obtained in the qualifying examination or on the basis of ranking assigned in the entrance test conducted by the prescribed authority. That so far as the admissions into medical and engineering colleges is concerned, they shall be made only on the basis of the ranking assigned in the common entrance test conducted by the prescribed authority.

The impugned Rule 6(c) if plainly read is undoubtedly ultra vires, being contrary to Section 3 of the Act, which mandates that admissions into medical and engineering colleges shall be made only on the basis of the ranking assigned in the common entrance test conducted by the prescribed authority. But much water has flown under the bridge that ultimately resulted in the decision in *TMA Pai's case* (I supra). In the result, there is no option except to read the provisions of Act 5 of 1983 and the Rules framed there under in the light of the decisions in *TMA pai's case* and *Islamic Academy of Education's case.*

In *TMA pais' case*(1 supra), the Supreme Court recognized the power as well as the duty of the Government to make regulations that will ensure excellence in education, while forbidding the charging of capitation fee and profiteering by the institution. However, it was left to the institutions concerned to determine the scale of fee that it can charge from students in case they choose not to seek any aid from the Government. Therefore, a private educational institution imparting education can only collect the fee, but not the capitation fee.

That so far as admission into professional institutions such as medical and engineering is concerned, the Supreme Court in *TMA Pai's case* (1 supra) observed that "merit must play an important role. While it may not be normally possible to Judge the merit of the applicant who seeks admission into a school, while seeking admission to a professional institution and to become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious but more influential applicants. Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission. Appropriate regulations for this purpose may be made keeping in view the other observations made in this judgment in the context of admissions to unaided institutions".

It is further observed:

"Merit is usually determined, for admission to professional and higher education colleges, by either the marks that the student obtains at the qualifying examination or school-leaving certificate stage allowed by the interview, or by a common entrance test conducted by the institution, or in the case of professional colleges, by government agencies." (emphasis is of our)

It is thus clear that one of the modes to determine merit for admission to professional and higher educational colleges may be based on the marks obtained

in the qualifying examination or the school leaving certificates, as the case may be.

The judgment in *TMA pai's case*(1 supra) was delivered on 31.10.2002. The Union of India, various State Governments and the educational institutions understood the majority judgment in different perspectives. Different statutes/regulations were enacted/framed by different state Governments leading to litigations in several Courts. Special leave petitions were filed in the Supreme Court in which attempts were made to interpret the majority decision, each in their own way as suited to them and under those circumstances a special bench has been constituted to clarify the doubts/anomalies, if any, found in *TMA pai's case*(1 supra). The Supreme Court after an elaborate consideration of its earlier decision in *TMA pai's case*, rendered judgment in *Islamic Academy of Education's case* (2 supra) in which the following four questions were framed for its consideration.

> "1). Whether the educational institutions are entitled to fix their own fee structure;
>
> 2) Whether minority and non-minority educational institutions stand on the same footing and have the same rights;
>
> 3) Whether private unaided profession colleges are entitled to fill in their seats to the extent of 100% and if not, to what extent; and
>
> 4) Whether private unaided profession colleges are entitled to admit students by evolving their own method of admission."

That while dealing with questions 3 and 4 together, the Supreme Court referred to paragraphs 58, 59 and 60 in *TMA pai's case* (1 supra) and addressed itself to the question as to how the managements of both minority and non-minority professional colleges can admit students in the quota allotted to them. The Court observed;

> "Undoubtedly, the majority judgment has kept in mind the sad reality that there are a large number of professional colleges

which indulge in profiteering and/or charging of capitation fees. It is for this reason that the majority judgment provides that in professional colleges admission must be on the basis of merit. As has been rightly submitted, it is impossible to control profiteering/charging of capitation fees unless it is ensured that admission is on the basis of merit. Also, as has been rightly pointed out, if a student is required to appear at more than one entrance test it would lead to great hardship. The application fees charged by each institute, even though they may be only Rs.500 to Rs.1000 for each institute, would impose a heavy burden on the students who will necessarily have to apply to a number of colleges. Further, as has been rightly pointed out, students would have to arrange for transport from and to and stay at various places if they have to appear for individual tests conducted by each college. If a student has to go for test to each institute it is possible that he/she may not be able to reach, in time, the venue of a test of a particular institute. In our view what is necessary is a practical approach keeping in mind the need for a merit-based selection. Paragraph 68 provides that admission by the management can be by a common entrance test held by "itself or by the State/University". The words "common entrance test" clearly indicate that each institute cannot hold a separate test. We thus hold that the management could select students, of their quota, either on the basis of the common entrance test conducted by the State or on the basis of a common entrance test to be conducted by an association of all colleges of a particular type in that state e.g. medical, engineering or technical etc., The common entrance test, held by the association must be for admission to all colleges of that type in the State. The option of choosing, between either of these tests, must be exercised before issuing of prospectus and after intimation to the concerned authority and the Committee set up hereinafter. If any professional college chooses not to admit from the common entrance test conducted by the association then that college must necessarily admit from the common entrance test conducted by the State."

Both the learned counsel laid emphasis on the observations "if any professional college chooses not to admit students from the common entrance test conducted by the association, then that college must necessarily admit students from the common entrance test conducted by the State" and submitted that in case no common entrance test is conducted by the association of non-minority professional colleges, no option is left except to admit the students based on the common entrance test conducted by the State. The submission is attractive and

there is some merit in the same. But on a deeper scrutiny, we find it difficult to strike down the very impugned rule on the ground of being violative of the judgment of the Supreme Court in *Islamic Academy of Education's case* (2 supra). The observations made by the Supreme Court are required to be understood in the proper context. In our considered opinion, the Supreme Court having considered the difficulties that were likely to be faced by the student community, in case each institution was to hold a separate common entrance test to fill up the quota of seats allotted to them, observed that such a course was not permissible and accordingly held that managements should select students of their quota; either on the basis of the common entrance test conducted by the State or on the basis of the common entrance test to be conducted by an association of all the colleges of a particular type in that State.

The Supreme Court in neither *TMA Pai's case* nor in *Islamic Academy of Education's case* ruled that merit is not the criteria for admission into medical and engineering colleges. On the other hand, the Court held that all admissions into professional colleges are required to be made based only on merit. The question is one of ascertainment of merit. That ascertainment of merit based on the qualifying examination is not ruled out in *TMA Pai's case* nor in *Islamic Academy of Education's case*.

Sri S.Niranjan Reddy, learned standing counsel appearing on behalf of the medical council of India however contended that admissions based on merit secured in the common entrance test may be desirable to achieve a uniform evaluation as there is a likelihood of variation of standards in the qualifying examination conducted by different agencies. The submission of the learned sanding counsel obviously is based on regulations 4 and 5 of the Regulations on Graduate Medical education. Regulation (4) mandates that no candidate shall be allowed to be admitted to the Medical Curriculum of first Bachelor of Medicine and

Bachelor of Surgery course until the candidate has passed qualifying examination. The fact that various qualifying examinations were conducted by the competent authorities through out the country are taken note of by Regulation (4). Regulation (5) provides for the criteria to be adopted for determination of the merit. It says that a competitive entrance examination should be held so as to achieve a uniform evaluation particularly in states where more than one University/Board/Examining body conducting the qualifying examinations is in existence. In the State of A.P. there is only one Board of Intermediate, which conducts the qualifying examination. May be, other qualifying examinations conducted by other agencies are also recognized for the purpose of admission into first year course of medicine. Even these regulations, in our considered opinion, are required to be understood in the context of the judgment of the Supreme Court in *TMA Pai's case* and in *Islamic Academy of Education's case*. That a fair reading of Regulations 4 and 5 does not exclude determination of merit of the candidate on the basis of marks secured in the qualifying examination.

In the circumstances, we find no force in the submissions made by the learned counsel for the petitioners that the impugned Rule 6(c) of the Rules is contrary to the judgment of the Supreme Court in *Islamic Academy of Education's case* (2 supra).

However, before parting with the case, we are constrained to make few observations.

The Government of A.P, immediately after the judgment of the Supreme Court in *Islamic Academy of Education's case* and in exercise of the powers conferred by Sections 3 and 15 of Act 5 of 1983 and in supersession of the Rules issued in G.O.Ms.No.3, Education Department dated 7.2.2003 made Rules called 'The Andhra Pradesh Common Entrance Test for entry into Engineering, Architecture,

Pharmacy, Agriculture, Medical and Dental Courses Rules, 2004' and notified them in G.O.Ms.No.16 dated 25.2.2004. The said rules provide for Common Entrance Test of Association of Colleges called EAMCET-AC means the examination conducted by Association of all colleges for assigning merit ranking to candidates which shall be the basis for admission of candidates to the extent of seats provided for the managements of Colleges in the State offering courses in Engineering, Medicine etc., Those rules are still in force. That even without superseding or modifying the said rules, the Government issued 'the Rules' referred to hereinabove, which do not provide for conduct of any entrance examination by the managements of association. The same has resulted in anomaly and confusion. It is not known as to what are those factors that compelled the rule making authority to give a go bye to the earlier rules, which were stated to have been made in the light of the directions issued by the Supreme Court in *Islamic Academy of Education's case* (2 supra) and *TMA pai's case* (1 supra). Though a statutory rule may not be struck down in the normal course on the grounds of motive/mala fide, but at the same time it is the duty of the rule making authority to reveal the objects and purposes for which the rules have been framed. It is unnecessary to go into the question whether the rule making authority enjoys the same immunity in rule making as that of a legislature enacting the laws.

The impugned Rule 6(c), which enables the individual colleges to make admissions on the basis of marks obtained in the qualifying examination is not properly structured to bring in transparency and accountability by the individual college managements. In *TMA Pai's case, Islamic Academy of Education's case* and as well as in the case of *Modern School v. Union of India* the Supreme Court high lighted the need to prevent commercialization of education to the extent possible. In case if the same rule is to be continued for making admissions into professional courses, enabling the managements to make admissions based on the

marks obtained in the qualifying examinations, in our considered opinion, the Rule is required to be restructured to ensure accountability and transparency. The rule is required to be so restructured in the light of the judgments rendered by the Supreme Court in *TMA pai's case (1 supra), Islamic Academy of Education's case (2 supra)* and in *Modern School's case (3 supra)*. It is not for us to suggest or direct as to in what manner the rule is to be restructured and it is for the rule making authority to consider the same.

With the observations as above, the writ petitions shall stand dismissed. No order as to costs.

(B.SUDERSHAN REDDY,J)

dt.: 29.. 09..2004

(K.C.BHANU,J)

msv.

To,

1. The Principal Secretary to the Government,

Medical and Family Welfare , E-1 Department, Secretariat,

State of Andhra Pradesh, Hyderabad.

2. The Registrar,

NTR University of Health Sciences,

Vijayawada.

3. The Secretary
Andhra Pradesh Private Medical & Dental Colleges Managements Association
(Regd) 103, Reliance Residency, Opp NTR Stadium, Ashok Nagar, Hyderabad,

4. The Secretary,

Medical Council of India, New Delhi.

5. The Principal,

Deccan College of Medical Sciences, Hyderabad.

6. 2 CCs to G.P. for Education, High Court of A.P,

High Court Buildings, Hyderabad. (out)

7. 2 CD copies.